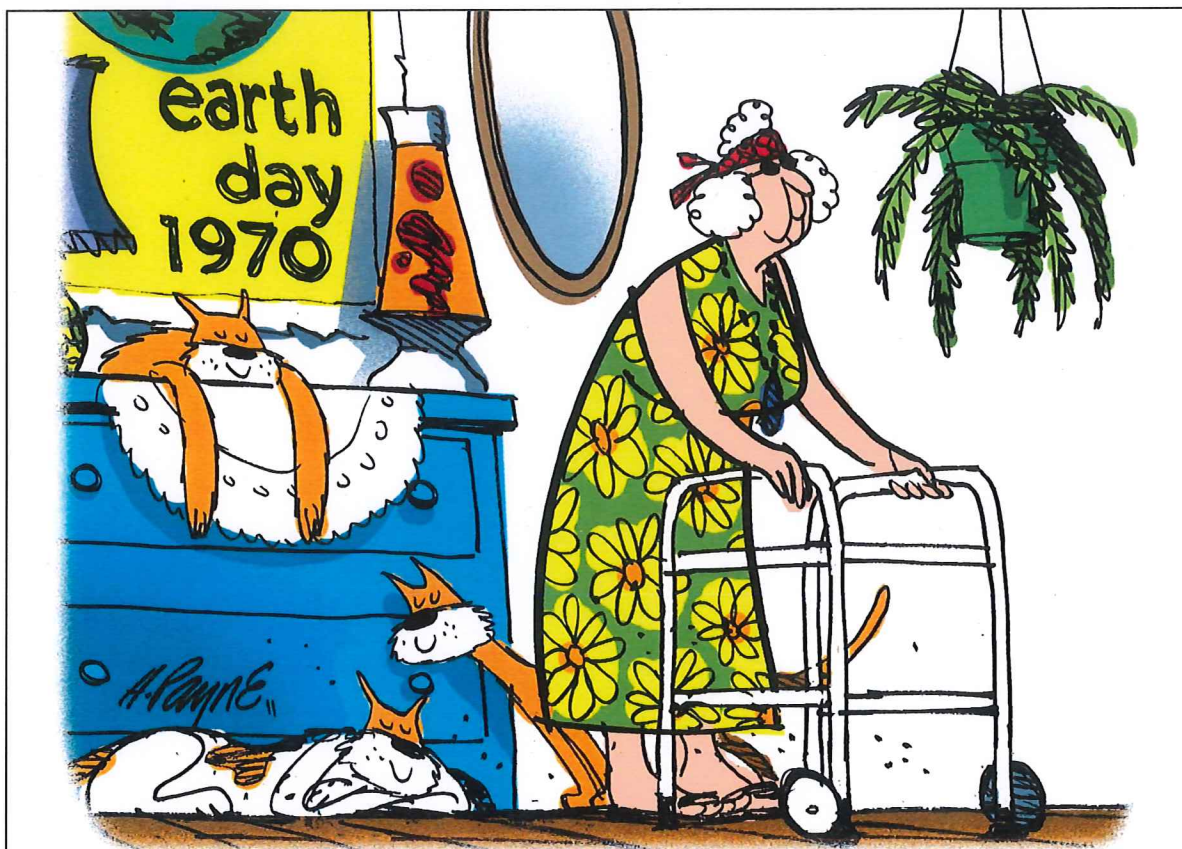


The Environmental FORUM[®]

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Has the Pizazz Gone Out of Environmental Protection?

Joint Pain

*The Clean Air Act's
Arteriosclerosis*

Toxicology

*Stakeholders and
the Role of Risk*

The Practice

*Changes Over the Next
Five to Ten Years*

Politics Failed, Not Ideas

David Rejeski deserves great credit for his important and provocative study. He is of course only measuring perceptions of environmental accomplishments rather than actual indicators of environmental quality. Thus, his measures are skewed toward laws passed and regulations promulgated rather than tons reduced. But his finding that most of the creative legal developments in U.S. environmental law took place between 1970 and the mid-1990s is nonetheless striking and important.

His diagnosis that the cause is a failure of ideas is nonsense, however. Climate change is an idea, and so are green energy, efficiency as an energy source, the smart grid, tradable renewable energy credits, green chemistry, ecosystem services, and pathway-based toxicity testing. There is no paucity of important environmental ideas since the mid-1990s. What has been lacking is the politics to enact new environmental initiatives at the national level in the United States. Major initiatives have continued in the rest of the world, for example, the EU's REACH (2007) and Renewable Energy Directive (2009). And they have also continued in the states, such as the Regional Greenhouse Gas Initiative in the Northeast (2003) or California's Green Chemistry Initiative (2009). Ideas aren't lacking; environmental politics at the national level in the United States has become dysfunctional. We have gone from cooperative federalism to inoperative federalism, to borrow a phrase from Professor Rob Glicksman.

There are two plausible explanations for the "Rejeski Gap," the absence of significant new environmental initiatives at the federal level in the United States since the mid-1990s — I would contend since the

1990 Clean Air Act and the 1992 Rio agreements on climate change, sustainable development, and biodiversity. One explanation focuses on the political dynamics of the environment, but another is broader and points to the breakdown of U.S. national political institutions more generally.

The Local Explanation: Environmentalists made three tactical mistakes of historic proportions since 1990. First, they have consistently supported Democrats, thereby undermining the competition between the two parties on environmental issues that characterized the more productive 1970 to 1992 period. Second, they have focused almost exclusively on climate change, thereby sucking the oxygen out of other issues (such as updating our chemical management system) on which bipartisan progress would have been possible. And third, they made a tactical blunder of historic proportions by taking the position that climate science was beyond debate, thereby abandoning public discourse in the United States on climate science to the antis.

In an academic article in 1985, "Toward a Theory of Statutory Evolution: The Federalization of Environmental Law," Bruce Ackerman, John Millian, and I described the political competition between Republicans and Democrats that resulted in many of Rejeski's most significant environmental accomplishments, including the creation of the Environmental Protection Agency and the passing of landmark statutes such as the National Environmental Policy Act, the Clean Air Act, and the Clean Water Act. This healthy competition between the two parties over environmental issues continued until 1992, about the time that the Rejeski Gap begins.

Let's go back to 1988, when the two parties still competed on environmental issues. George H. W. Bush ran campaign ads attacking his Democratic opponent for poor performance in cleaning up Boston Harbor, promised "no net loss of wetlands," and to be "the Environmental President." He proposed and supported the most ambitious environmental legislation in our history, the 1990 Clean Air Act Amendments. When he proposed the bill in a Rose Garden ceremony in July 1989, President Bush said: "Clean air is too important to be a partisan issue. Anyone who allows political bickering to weaken our progress against pollution does a tragic disservice to every city in America and to every American in this country who wants and deserves clean air."

Bush also signed, and the Senate ratified by a bipartisan two-thirds majority, the 1992 Framework Convention on Climate Change, committing the United States to stabilization of greenhouse gases at 1990 levels, a goal that we are not meeting today. Bush noted proudly in his signing statement that the United States was "the first industrialized nation (and the fourth overall) to ratify this historic treaty" and called it "the first step in crucial long-term international efforts to address climate change." (I am sure that partisan Democrats will be unimpressed, but as a point of comparison, note that today everyone running for president in the Republican party must first renounce his or her prior support for climate change legislation as a pre-condition to entering the race as a serious contender.)

Nonetheless, despite that Bush's strong environmental record under one of EPA's best administrators,



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William K. Reilly, environmentalists supported his opponent in 1992, Bill Clinton, a Democratic governor without any notable environmental accomplishments, whose state ranked 49th in environmental performance at the time.

The message was not lost on Republicans, particularly not on his son, George W. Bush, who concluded that a Republican could never win on environmental issues and stopped competing. Unlike his father, George W. Bush's policy on the environment in the 2004 campaign was to avoid the issue and shift the focus to terrorism. The environment had gone from being an issue on which the two parties competed to being the exclusive property of Democrats. In 1970, a Republican President, Richard Nixon, created EPA, but today, a Republican presidential candidate, Michelle Bachmann, proposes to abolish it.

This same story has played out over and over. John McCain courageously broke ranks with his party to co-sponsor climate change legislation from 2003 to 2007, only to be rewarded by a "zero" rating by the League of Conservation Voters in 2007, the year that he began running for the presidential nomination. Environmentalists supported former-Senator Lincoln Chafee's (R-Rhode Island) successful opponent, despite Chafee's willingness to break ranks with his party and support strong environmental and energy legislation. Same result for 10-term Connecticut Congressman Chris Shays, another liberal Republican who was strong on environmental issues and co-founded Republicans for Environmental Protection, but whose Democratic opponent in 2008 environmentalists found even more to

their liking — and so they helped to defeat Shays.

Said differently, between 1970 and the 1990s, there was active competition between the two political parties on environmental issues, which resulted in many environmental accomplishments. The Democrats won the competition. The environment is now their issue and as a result, almost nothing has been accomplished for twenty years.

This should come as no surprise to students of political science or the Constitution. The Framers designed a system in which it is almost impossible to create abiding legal "environmental accomplishments" of the sort being measured by Rejeski without at least some bipartisan support. In a lecture at Duke on the 40th anniversary of EPA, I propounded this as Elliott's First Theorem: "In the American political system with its checks and balances, environmentalists do better for the environment if the two parties compete for their support than if they are assumed to be the property of one party and the other party opposes them." The inability to legislate on climate change in 2009-2010, when Democrats controlled the presidency and both houses of Congress, should be an object lesson.

The current dead end was probably inevitable as a result of the organizational structure of environmentalism. Environmentalists are not a hierarchically organized group with a leader or executive committee that can decide to support a candidate who is less good on their issues just because his or her vote will be more valuable to them in getting things enacted in the next Congress. Rather, environmentalists are a loosely organized popular movement that responds primarily to the ideological purity of positions that candidates take.

The More General Explanation:

If the Rejeski Gap and the political dynamics underlying it were unique to the environment, it would perhaps only be of interest to those of us in environmental policy. But the phenomenon resonates with broader trends in American politics. The same period in which the American national political system has become dysfunctional on environmental issues is also one in which it hasn't done so well on many other important issues, such as managing our financial affairs, reforming Social Security and the income tax system, or keeping us out of elective foreign wars.

As poet William Butler Yeats wrote, "Things fall apart; the centre cannot hold; ... The best lack all conviction, while the worst [a]re full of passionate intensity." Or as former EPA Administrator, Health and Human Services Secretary, and Utah Governor Michael O. Leavitt made the point, "There is no progress to be made at the extremes. Progress can only be made in the productive center."

Where have all the moderates gone and how do we get them back? That is a large topic for another day, but my favorite prescription is to repeal the 17th Amendment (adopted in 1913, mandating direct popular election of senators rather than selection by state legislatures). We have gone too far in the direction of mass politics and the perpetual campaign. We need to go back to the system designed by our Framers in which some of our leaders are sufficiently insulated from the 24/7 news cycle of ideological positions that they can do what is good for the country.

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